

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

ANTHONY T. COCCIARDI,
Debtor.

Case No. 91-5-7664-MM

PHILLIP and DEBRA WILLIAMS,
Plaintiffs,
vs.

Adversary No. 92-5172

MEMORANDUM DECISION

ANTHONY T. COCCIARDI,
Defendants.

INTRODUCTION

The matter is before the Court on Phillip and Debra Williams' Motion for Relief from Stay for leave to proceed with a suit that is pending in the State Superior Court for Santa Clara County against Anthony Cocciardi for fraud, negligent misrepresentation, and rescission and breach of contract. To determine the merits of the motion, the Court must decide whether abstention from hearing the issues raised in that case is appropriate. The Court requested that the parties brief the factors set forth in Tucson Estates, and the parties have complied. For the reasons that follow, the Motion for Relief from Stay is denied.

FACTS

The Williams filed their complaint against Cocciardi in the Superior Court on July 18, 1990. A jury trial was conducted, and on May 15, 1991, the jury returned a verdict for the plaintiffs in the amount of \$710,195.00 for actual damages. Prior to the punitive damages phase of the trial, the litigants entered into a stipulated judgment for \$1,350,000.00 and the return of the disputed property. The Superior Court dismissed the jury that rendered the judgment on liability, and the Williams recorded the judgment in Santa Cruz County. The Williams later petitioned the Superior Court to set aside the stipulated judgment when they learned that an injunction had been issued precluding the transfer of some of Cocciardi's assets, and the Superior Court set aside the stipulated judgment on November 13, 1991.

Cocciardi filed his chapter 11 petition on December 13, 1991. On March 27, 1992, the Williams filed a complaint to determine dischargeability based on the same alleged conduct that is the subject of the Superior Court suit.

DISCUSSION

The Court may, in its discretion, abstain from hearing a matter in the interest of justice, or in the interest of comity with state courts or respect for state law. 28 U.S.C. § 1334(c)(1). Upon a review of the factors enumerated in Tucson Estates, which is controlling here, the Court finds that on balance, abstention would not be appropriate in this case. The factors that the Court finds to be compelling are the following.

First, abstention would have an adverse effect on the efficient administration of the estate. A new trial will have to be conducted on both liability and punitive damages because California Civil Code § 3295(d) mandates that evidence of the defendant's financial condition be presented to the same trier of fact that finds for the plaintiff. The debtor already has indicated that he will appeal a determination of punitive damages by a fact finder other than the one that heard the issue of liability. A new trial in the Superior Court and the prospect for an appeal will necessarily delay the administration of the estate. This Court is as capable as the Superior Court of making an expeditious determination of the issues raised in both complaints.

1 Although the issues will ultimately be resolved by reference to state law, state law issues do
2 not predominate over the dischargeability issues. The applicable state law is neither unsettled nor
3 difficult. The complaint filed by the movants commencing an adversary proceeding to determine
4 dischargeability raises the same issues as those in the Superior Court case. Although severance may
5 be feasible, it would not be efficient. It would be a more economical use of judicial resources at this
6 juncture to determine liability, damages, and dischargeability in the same forum. By filing the
7 adversary proceeding, the movants have submitted to the equitable jurisdiction of the Bankruptcy
8 Court to determine these issues. See In re Marshland Development, Inc. (citing Grandfinanciera).

9 Further, a Court must look to both the substance as well as the form of a proceeding to
10 determine whether a case is core. In re Wood, 825 F.2d 90, 97 (5th Cir. 1987). The issues raised in
11 the Superior Court case are sufficiently related to the bankruptcy case for the former to be deemed a
12 core proceeding. 28 U.S.C. § 157(b)(2)(I)(determinations as to dischargeability). The essence of the
13 action is the determination of the dischargeability of Cocciardi's debt to the Williams. See Marshland
14 Development. The determination of the movants' entitlement to relief will impact the distribution to
15 creditors in the case. As such, the claims are integral to the restructuring of the debtor-creditor
16 relationship. Id. at 631.

17 Finally, the Court does not perceive the evidence of the debtor's forum shopping as persuasive
18 because the debtor has not attempted to remove the Superior Court case to the Bankruptcy Court.
19 Instead, it is the movants who have raised the same issues before the Court by filing the
20 dischargeability complaint.

21 22 CONCLUSION

23 The factors enumerated in Tucson Estates balance in favor of the Court's exercise of
24 jurisdiction over the issues raised in both the Superior Court case and the adversary proceeding.
25 Therefore, abstention would be inappropriate, and the Motion for Relief from Stay is denied.

26
27 DATED: _____

28 UNITED STATES BANKRUPTCY JUDGE